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## **FEDERAL COURT SIDES WITH PSC ON PROTECTION FOR KENTUCKY ELECTRIC RATEPAYERS**

*Ruling backs Kentucky law giving priority to in-state customers*

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FRANKFORT – A federal judge has refused to reverse the Kentucky Public Service Commission's orders that regulated electric utilities in the state must establish procedures that would insure that their Kentucky retail customers (known as "native load" customers) receive priority for service in the event of a power shortage.

U.S. District Judge Joseph M. Hood, in a ruling issued in federal court in Frankfort on Thursday, said that Kentucky law giving priority to native load customers cannot be superceded by orders of the Federal Energy Regulatory Commission, or FERC.

"The FERC has no authority to regulate in the area of service adequacy for a native load," Judge Hood wrote in response to the complaint filed by Kentucky's three largest regulated electric utility companies. "FERC's regulatory effort in this area exceeds its authority."

The ruling came in cases filed in federal court by American Electric Power Co. (AEP), Kentucky Utilities Co. (KU), and Louisville Gas & Electric Co. (LG&E). The companies challenged PSC orders that moved to enforce the provisions of KRS 278.214, the Kentucky law enacted in 2002 that requires regulated utilities to give priority to native load.

Protection for native load is a central issue in the ongoing debate over the creation of Regional Transmission Organizations (RTOs), entities that control electric transmission over a multi-state area. The FERC wants all electric utilities to join RTOs, while Kentucky and other states have expressed doubts that the benefits of membership would outweigh the costs for ratepayers in those states.

"On this issue, the Commission's mandate is clear," PSC Executive Director Tom Dorman said. "The Kentucky General Assembly clearly expects the PSC to enforce native load protection."

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While the PSC is not categorically opposed to utilities joining RTOs, it is concerned that membership could lead to an increase in Kentucky's electric rates, which are the lowest in the region and among the lowest in the nation, Dorman said.

"Regardless of how RTOs are structured, we don't want to see Kentucky ratepayers, who have funded a robust and reliable electric transmission system within the state, forced to pay for upgrades in other states in order to ship more power across an RTO," Dorman said. "And we are concerned that the creation of regional power markets will inevitably drive the price of electricity toward an average, meaning higher rates in Kentucky."

Citing such concerns, the PSC in July denied Kentucky Power, AEP's Kentucky subsidiary, permission to transfer its transmission system to the PJM Interconnection, an RTO based in Pittsburgh. Subsequently, the PSC agreed to reopen the case in order to allow AEP to present a cost-benefit analysis. The case is still pending before the PSC.

Also in July, the PSC opened an investigation to look into whether KU and LG&E should continue to belong to the Midwest Independent System Operator, or MISO, an Indianapolis-based RTO. That case also is still pending.

In November, the FERC moved against Kentucky and Virginia, saying that actions taken by the PSC and the Virginia Corporation Commission in regard to AEP membership in PJM violated federal law. The FERC is proposing to override the state actions.

"We believe that Judge Hood's order clearly establishes the rights of the state in determining what is best for its electric utility customers," Dorman said. "We are confident that this will reinforce our position in the proceeding now before the FERC."

The Kentucky Office of Attorney General and the Kentucky Industrial Utility Customers, Inc. joined the PSC in opposing the utility lawsuit. The utility companies have filed a similar complaint in Franklin Circuit Court.

